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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Magalie Roman Salas, Esquire

Secretary

Federal Communications Commission

445 12th Street, S.W., Room TW-B204

Washington, D.C. 20554

Re: MM Docket 98-176
RM-9363
Killeen and Cedar Park, Texas

Dear Ms. Salas:

Transmitted herewith, on behalf of LBJBS Broadcasting Company, L.P. are an original and four copies of its "Supplemental Reply Comments" in the above-referenced proceeding.

Should any further information be required concerning this matter, please communicate with this office.

Very truly yours,
FLETCHER, HEALD & HILDRETH, P.L.C.

Anne Goodwin Crump

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Counsel for LBJBS Broadcasting Company, L.P.

Enclosures

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ORIGINAL

Before the
Federal Communications Commission
Washington DC 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-176
Table of Allotments,)	RM-9363
FM Broadcast Stations.)	
(Killeen and Cedar Park, Texas))	

Directed to: Chief, Allocations Branch

SUPPLEMENTAL REPLY COMMENTS

LBJS Broadcasting Company, L.P. ("LBJS"), licensee of KLNC(FM), Killeen, Texas, by its attorneys, hereby respectfully submits its Supplemental Reply Comments in the above-captioned proceeding and respectfully requests that they be accepted and considered in that proceeding. LBJS proffers herein a further citations to a recent Commission cases, released April 30, 1999, after the relevant comment deadline. With respect thereto, the following is stated:

1. In the Commission's *Notice of Proposed Rule Making* in this proceeding, DA 98-1939, released September 25, 1998 ("*NPRM*"), the Commission proposed reallocation of Channel 227C from Killeen to Cedar Park, Texas, as that community's first local aural transmission service and modification of the license for KLNC(FM) to specify the new community. The Commission specifically noted in the *NPRM* that the proposed allotment at Cedar Park would continue the current short-spacings associated with the current Killeen allotment.

2. The Commission has previously established a policy that it will waive strict application of the minimum distance separation requirements set forth in Section 73.207 of its

Rules in the context of requests for reallocation which involve no new short-spacings, no exacerbation of existing short-spacings, and no increased potential for interference between the currently short-spaced stations. *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (1992) (“*Newnan/Peachtree City*”). In the *NPRM*, the Commission explicitly requested comment concerning the continuation of its *Newnan/Peachtree City* policy. Further, the *Newnan/Peachtree City* case involved stations which were pre-1964 grandfathered short-spaced stations.¹ The Commission also sought comments as to the policy’s application to short-spacings which arose after 1964.

3. In its Comments and Reply Comments filed in this proceeding, LBSJ strongly supported continuation of the policy set forth in *Newnan/Peachtree City* and application of that policy to this proceeding. The same rationale would apply to any station which was authorized in accordance with the Commission’s rules but which has become short-spaced. In particular, the reasoning would apply to a station which was fully spaced when authorized but has become short-spaced to another station whose facilities have been authorized under the contour protection provisions of Section 73.215 of the Commission’s Rules.

4. In its Comments and Reply Comments submitted in this proceeding, GulfStar Communications Killeen Licensee, Inc. (“GulfStar”) has opposed the extension of the *Newnan/Peachtree City* policy to any post-1964 short-spacing. GulfStar argues that any consent to reallocations involving post-1964 short-spacings would undermine the FM Table of Allotments and the technical integrity of the FM band. This argument, however, is contrary to

¹ The term “grandfathered” short-spaced station refers to those FM stations at locations authorized prior to November 16, 1964, that did not meet the separation distances required by the later-adopted Section 73.207 of the Commission’s Rules, and have remained short-spaced since that time.

other determinations previously made by the Commission. Therein, the Commission's staff has found that allotments and reallocations which would be short-spaced only to a station authorized pursuant to the contour protection provisions of Section 73.215 of the Commission's rules appear to serve the public interest.

5. In a recent *Notice of Proposed Rule Making*, the Commission proposed the reallocation of a channel which involved a short-spacing to an application. See, *Kennett, Missouri and Keiser, Arkansas*, DA 99-819 (released April 30, 1999) ("*Kennett/Keiser*"). In that case, as in the instant proceeding, Station KTMO(FM) proposed reallocation to a new community to provide a first service but did not propose any change in transmitter site. The Commission first noted that the KTMO(FM) licensed site, at proposed allotment reference co-ordinates, was short-spaced to a pending application for a new station at Pangburn, Arkansas. While the KTMO(FM) reallocation co-ordinates were fully spaced to the vacant allotment reference co-ordinates, once the new station is authorized, the reference co-ordinates will change to the authorized site pursuant to Section 73.208. The Commission further noted that the Pangburn applicant had amended its application to specify a new transmitter site to be authorized under the provisions of Section 73.215. The Commission's staff found this arrangement to be acceptable, stating that "[a]s a result, the proposed Pangburn facility now provides the requisite interference protection to Station KTMO." *Id.* at 2, n.2.

6. The staff indicated thereby its conclusion that a station providing contour protection will maintain the desired technical integrity of the FM band. Thus, the Commission implicitly has already rejected GulfStar's arguments concerning the maintenance of the integrity of the FM band where another station has moved closer to the proponent under Section 73.215. Under these circumstances, a channel may be reallocated to a new community when the reference co-

ordinates are not fully spaced to a station operating or proposing to operate pursuant to Section 73.215.

7. The reasoning set forth in the *Kennett/Keiser* proceeding followed the precedent set in *Camden, East Camden and Stamps, Arkansas; Gibsland and Minden, Louisiana*, 10 FCC Red 7208 (Alloc. Branch 1995) ("*Camden, et al.*"). Therein, the Commission made an allotment despite the fact that the allotment reference co-ordinates were short-spaced to the licensed site of a station authorized pursuant to Section 73.215. In *Camden, et al.*, the Commission stated:

[w]e recognize that the allotment of Channel 238A at Gibsland is short spaced to the license issued to Jade Communications, Inc. ("Jade") (File No. BLH-941201KA) for Station KMGC(FM) to operate on Channel 238A at Camden, Arkansas, at coordinates 33-30-14 and 92-48-38. However, the Camden authorization was granted in accordance with the provisions of Section 73.215 of the Commission's Rules which allows contour protection for short spaced assignments.


Id. at 7210 n. 16. Thus, in this instance, the Commission allowed a new short-spacing to be created, and not merely an existing short-spacing to be continued, in light of the fact that the station to which the new allotment would be short-spaced was authorized using contour protection.

8. This determination accords with the Commission's previous ruling that stations authorized pursuant to Section 73.215 are entitled to protection from interference only with regard to their actual predicted contours rather than the predicted contour which would result if maximum facilities were assumed. It is apparent, therefore, the Commission has reached a policy decision in this regard. While the Commission may change its policy, should it elect to do so, it must provide an articulated and reasoned basis for any such change. LBJS would instead

urge the Commission to maintain its current policy, reject GulfStar's attempt to re-write it, and to adopt the proposal set forth in the *NPRM*.

Respectfully submitted,

LBJS BROADCASTING COMPANY, L.P.

By: 
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June 1, 1999

CERTIFICATE OF SERVICE

I, Deborah N. Lunt, a secretary for the law firm of Fletcher, Heald & Hildreth, P.L.C., hereby certify that a true copy of the foregoing "Supplementary Reply Comments" was sent this 1st day of June, 1999, by first class mail, postage prepaid, to the following:

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